IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. S.B.CRIMINAL MISC. PETITION NO.305/2003
(Babu Lal Vs. Smt. Kamla)

2. S.B.CRIMINAL MISC. PETITION NO.499/2005
(Babu Lal Vs. Smt. Kamla)

3. S.B.CRIMINAL MISC. PETITION NO.878/2004
(Smt.Kamla Vs. Babu Lal)

against the judgment dt. 5.12.2002 passed by learned Addl. Sessions Judge (Fast Track) Rajsamand in Cr. Revision Nos. 5/02 and 6/02.

Date of Order :: 16.1.2007

PRESENT

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Pankaj Bohra on behalf of
Mr.Ravi Bhansali, for the petitioner.
Mr.Sandeep Saruparia, for the respondent.

Since these three misc. petitions arise out of one and same judgment dated 5.12.2002 passed by learned Additional Sessions Judge (Fast Track), Rajsamand in criminal revision Nos. 5/2002 (Babu Lal Vs. Smt. Kamla) and 6/2002 (Smt. Kamla vs.

Babu Lal), therefore, these misc. petitions are decided by this common order.

By S.B.Criminal Misc. Petition No.305/2003, the petitioner has challenged the order of learned Additional Sessions Judge whereby he has dismissed the revision petition filed by petitioner. Another misc. petition under Section 482 Cr.P.C. being S.B.Criminal Misc. Petition No.499/2005 has also been filed by Babu Lal challenging the same judgment whereby the revision petition filed by Smt.Kamla for enhancement of maintenance was partly allowed and the order of learned Additional Civil Judge (Sr.Div.) & Additional Chief Judicial Magistrate, Rajsamand dated 8.3.2000 was modified to the extent that non-petitioner Babu Lal shall pay the maintenance of Rs.250/- to the petitioner Smt.Kamla from the date of filing application. Third misc. petition being S.B.Criminal Misc. Petition No.878/2004 has been filed by Smt. Kamla for enhancement of maintenance allowance.

Learned counsel for the petitioner-Babu Lal states that Smt.Kamla is not married wife of Babu Lal. On the contrary, she was legally wedded wife of one Ramesh Chandra from whom

she never got any decree of divorce. He also states that she was living in adultery. Therefore, she is not entitled for maintenance as claimed by her and awarded by the learned courts below. It is further stated that learned courts below also failed to consider that an FIR was lodged by Smt.Kamla against Babu under Section 498-A and 363 IPC and challan was filed after investigation but thereafter, the petitioner was acquitted by the trial court. This application under Section 125 Cr.P.C. has been filed by Smt.Kamla thereafter at belated stage. Learned counsel also states that the petitioner has no means. Learned Additional Sessions Judge has not considered the matter in true prospect and maintenance of Rs.250/- was allowed to Smt.Kamla from the date of presentation of the application instead of date of order.

Learned counsel for the petitioner-wife states that Babu Lal has sufficient means and it is also clear from the record that Smt.Kamla is living with her father and also maintained by him but trial court has awarded only maintenance of Rs.250/-per month. This aspect has not been considered by learned trial court as well as revisional court.

I have considered the rival submissions advanced by learned counsel for the parties and gone through the orders passed by learned both the courts below as well as relevant documents produced before me. Learned Magistrate after hearing both the parties and due consideration of material on record, reached to the conclusion that Smt.Kamla is entitled for maintenance of Rs.250/- per month and it has been awarded from the date of order. The revisional court also considered the matter in detail and found that maintenance allowed by the learned Magistrate was just, however, he has passed the order that husband-Babu Lal shall pay the monthly maintenance allowance from the date of filing of the application i.e. 30.7.1997. Since two courts below have considered this matter at length, I do not find any ground to interfere with the impugned orders passed by both the courts below while exercising power under Section 482 Cr.P.c.

In the same way, since the learned Magistrate, considering the economic condition of the petitioner-Babu Lal has awarded maintenance of Rs.250/- to Smt.Kamla, I do not find any ground to enhance the monthly maintenance as awarded by the

learned learned Magistrate.

Accordingly, the instant misc. petitions fail and are hereby dismissed.

(KRISHAN KUMAR ACHARYA), J.

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